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HOUSE BILL 1390
By Harwell

AN ACT to amend Titles 33, 36, 37, 38, 49, 68 and 71 of the Tennessee Code Annotated, relative to the care for and protection of certain persons.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 71-3-501, is amended by deleting subsection (a) in its entirety, and by substituting instead the following language after the catchline:

As used in this part, unless otherwise exempted pursuant to § 71-3-503, and unless the context otherwise requires:

SECTION 2. Tennessee Code Annotated, Section 71-3-501, is amended by deleting the subsection designation and language: “(b) As used in this part, unless otherwise excluded pursuant to § 71-3-503, and unless the context otherwise requires:”; and is further amended by deleting subdivisions (3), (4), (5), (8), (9), (10) and (11) in their entirety, and by substituting instead the following language:

(3) “Child care” means, for purposes of this part, the provision of supervision and protection, and, at a minimum, meeting the basic needs, of a child or children for less than twenty-four (24) hours a day.

(4) “Child care agency” or “agency” means, for purposes of this part, and only where the context requires in any other provision of law, a place or facility, regardless of whether it is currently licensed, that is operated as a “family child care home”, a “group child care home”, a “child care center”, or a “drop-in center”, as those terms are defined in this part.

(5) “Child care center” means any place or facility operated by any person or entity that provides child care for three (3) or more hours per day for at least thirteen (13) children who are not related to the primary caregiver(s); provided that a child care agency shall not be classified as a “child care center” that operates as a “group child care home” and keeps three (3) additional school-age children as permitted in subdivision (10); provided, further that all children, related or unrelated shall be counted in the adult-to-child supervision ratios and group sizes applicable to child care centers; with the exception that if the child care center is operated in the occupied residence of the primary caregiver(s), children nine (9) years of age or older who are related to the primary caregiver(s) will not be counted in determining the adult-to-child supervision ratios or group sizes applicable to child care centers if such children are provided a separate space from that occupied by the child care center. The department may permit children in the separate space to interact with the children in the licensed child care center in such manner as it may determine is appropriate;

(8) “Drop-in center” means a place or facility operated by any person or entity providing child care for fifteen (15) or more children at the same time for short periods of time, not to exceed ten (10) hours per week and for not more than six (6) hours per day for any individual child, while the parents or other custodians of the children are engaged in short-term activities that do not include employment of the parent or other custodian of the child; provided, however, that notwithstanding any

other requirements of this part, training requirements for the staff of this class of child care agency shall be limited to basic health and safety precautions and the detection and reporting of child abuse and neglect for children in care;

(9) "Family child care home" means any place or facility which is operated by any person or entity that provides child care for three (3) or more hours per day for at least five (5) children but not more than seven (7) children who are not related to the primary caregiver(s); provided, that the maximum number of children present in the family child care home, including related children of the primary caregiver(s) shall not exceed twelve (12), with the exception that, if the family child care home is operated in the occupied residence of the primary caregiver(s), children related to the primary caregiver(s) nine (9) years of age or older will not be counted in determining the maximum number of children permitted to be present in a "family child care home" if those children are provided a separate space from that occupied by the family child care home. The department may permit children in the separate space to interact with the children in the licensed family child care home in such manner as it may determine is appropriate.

(10) "Group child care home" means any place or facility operated by any person or entity that provides child care for three (3) or more hours per day for at least eight (8) children who are not related to the primary caregiver(s); provided, however, that the maximum number of children present in a "group child care home", including those related to the primary caregiver, shall not exceed twelve (12) children, with the exception that if the group child care home is operated in the occupied residence of the primary caregiver(s), children related to the primary caregiver(s) nine (9) years of age or older, will not be counted in determining the maximum number of children permitted to be present in a "group child care home" if those children are provided a separate space from that occupied by the group child

care home; and, provided, further, that up to three (3) additional school age children, related or unrelated to the primary caregiver(s), may be received for child care before and after school, on school holidays, on school snow days and during summer vacation. The department may permit children in the separate space to interact with the children in the licensed group child care home in such manner as it may determine is appropriate.

(11) "Related" means the children, step-children, grandchildren, step-grandchildren, siblings of the whole or half-blood, step-siblings, nieces, nephews or foster children of the primary care giver.

SECTION 3. Tennessee Code Annotated, Section 71-3-502(a), is amended by deleting subdivision (1) in its entirety and by substituting instead the following:

(1) All persons or entities operating a "child care center", "drop-in center", "family child care home" or a "group child care home", as defined in this part, unless exempt as provided in § 71-3-503, must be licensed by the department as a "child care agency".

SECTION 4. Tennessee Code Annotated, Section 71-3-502(a)(3), is amended by deleting the language "The department's regulations of child care agencies shall be developed, as well as the continued approval of the licensing status of a child care agency, shall both be based upon the following criteria:" and by substituting instead the language "The department's regulations of child care agencies shall be developed based upon consideration of the criteria in subdivisions (A)-(F). In determining whether to initially grant a license or whether to take any licensing action involving a licensed child care agency, the following statutory criteria in subdivisions (A)-(F) may be cited and considered by the department and by the child care agency board of review as the basis for such action in addition to the regulations:".

SECTION 5. Tennessee Code Annotated, Section 71-3-502(a)(3), is amended by adding the following new subdivision (C) and by re-designating subsequent subdivisions accordingly:

(C) Evidence that the expected performance of the caregivers, supervisors or management of the child care agency seeking initial licensure or renewal of licensure will be such as to protect children in care from injury, harm or the threat of injury or harm; or, during licensure, that the actual performance of any of the duties of caregivers, supervisors or management of a licensed child care agency demonstrates or has demonstrated a level of judgment, that a reasonable person would exercise or would have exercised, under existing or under reasonably foreseeable circumstances, that would prevent or would have prevented injury, harm, or the threat of injury or harm, to any child in care.

SECTION 6. Tennessee Code Annotated, Section 71-3-502(j), is amended by adding the word “and” immediately after the word and punctuation “enrichment;” in subdivision (1)(D); and is further amended by deleting subdivision (1)(E) in its entirety and by re-designating subdivision (F) as subdivision (E); and is further amended by deleting subdivision (4) in its entirety and by substituting instead the following:

(4) Any child care agency that knowingly provides false information or which fails to provide the information required by this subsection shall be subject to denial or revocation of its license by the department and may also be subject to a civil penalty of five hundred dollars (\$500.00) imposed by the department.

SECTION 7. Tennessee Code Annotated, Section 71-3-503(a)(10), is amended by deleting subdivision (10) in its entirety and by substituting instead the following:

(10)(A) “Casual care” operations consisting of places or facilities operated by any person or entity that provide child care for less than fifteen (15) children at the same time during short periods of time that do not exceed ten (10) hours per week or six

(6) hours per day for any individual child while the parents or other custodians of the children are engaged in short-term activities, not including employment of the parent or other custodian of the child;

(B) These operations shall register with the department their intent to conduct casual care of children, and, as evidence of their exempt status, these operations shall maintain records which include, at a minimum, the children's names, ages, addresses, dates and times of attendance, the parents' or custodians' names, addresses, and intended whereabouts while the children are in care, and the telephone numbers of persons to contact in the event of an emergency. All records shall be made available at any time to any authorized representative of the department.

(C) Failure to comply with the requirements of this subdivision shall subject the violator to a civil penalty by the department not to exceed five hundred dollars (\$500.00) for the first violation and not to exceed one thousand dollars (\$1000.00) for subsequent violations, and the department may seek injunctive relief in the chancery or circuit court of the county where the place or facility is located to prevent further operation of the place or facility or to obtain entry to conduct any inspection of the operation.

SECTION 8. Tennessee Code Annotated, Section 71-3-504(b), is amended by deleting the last sentence.

SECTION 9. Tennessee Code Annotated, Section 71-3-507(a)(1)(A) is amended by deleting the language "or who applies for a license for" and by substituting instead the language "or who applies for any license, that is not the renewal of an existing license, for".

SECTION 10. Tennessee Code Annotated, Section 71-3-507(a)(2)(B), is amended by deleting the language "Tennessee Bureau of Investigation" and by substituting instead the language "the department"; and is further amended by adding the language "that is not the

renewal of an existing license” immediately following the language “of the license application”; and is further amended by deleting the language “for an initial license” after the language “of the application” and by substituting instead the language “for a license that is not the renewal of an existing license”.

SECTION 11. Tennessee Code Annotated, Section 71-3-507(b), is amended by deleting subdivisions (1)-(4) in their entirety and by substituting instead the following new language:

(1) The disclosure form, or information contained on the form, obtained pursuant to this section, together with the fingerprints of the person shall be submitted by the child care agency for its applicants, licensees, operators, substitutes or residents, and by the department for its applicants, to the appropriate department staff in such format as required by the department and the Tennessee bureau of investigation. The department will transmit the necessary information to the Tennessee bureau of investigation for completion of the criminal background check.

(2) The Tennessee bureau of investigation shall compare the information and the fingerprint sample received with the computer criminal history files maintained by the bureau and to the extent permitted by federal law, with federal criminal databases, and shall conduct the fingerprint and criminal history background check for the person pursuant to § 38-6-109. It shall report the existence of any criminal history involving the person to the department which shall inform the child care agency of the results of the inquiry.

(3) The results of the inquiry to the Tennessee bureau of investigation shall be documented in the records of the child care agency for the person for whom the background check is sought, and the department shall also maintain a record of the results of all persons for whom a criminal background history is received.

(4) The department shall notify in writing the appropriate district attorney general of any falsification of the information on the criminal history disclosure form.

SECTION 12. Tennessee Code Annotated, Section 71-3-507(e)(1), is amended by deleting subdivisions (A) and (B)(i) and (ii) in their entireties and by substituting instead the following:

(A)(i) Whether obtained by use of the fingerprint-based criminal background review procedures established in this section or whether information is obtained by any other means, no individual shall be employed with, be a licensee or operator of, provide substitute services to, or have any access whatsoever to children in a child care agency as defined by this part, nor shall such person be employed with the department in a position having significant contact with children, whose criminal history background demonstrates that the individual has been convicted of, pled guilty or no contest to an offense or lesser included offense, or is the subject of a juvenile finding which would constitute an offense or lesser included offense, or whose criminal history report or other information demonstrates the existence of a pending warrant, indictment, presentment, involving:

(a) the physical, sexual or emotional abuse or gross neglect of a child

(b) a crime of violence against a child, or any person;

(c) any offense determined by the department, pursuant to properly promulgated rules, to present a threat to the health, safety or welfare of children;

(d) the identification of the individual on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10.

(ii) No person who is currently charged with or who has been convicted of or pled guilty to a violation of § 39-13-213, § 55-10-101, § 55-10-102 or § 55-10-

401, or any felony involving use of a motor vehicle while under the influence of any intoxicant, may, for a period of five (5) years after the date of such conviction or felony plea, be employed as or serve as a driver transporting children for a child care agency.

(B)(i) Upon receipt of the criminal background report or other information regarding the criminal history of an individual from the department, the child care agency shall immediately review the report or information to determine if the person for whom the criminal background check was requested is within the prohibited categories under subdivision (A), and, if necessary, shall immediately consult with the department to further determine if the individual is within the prohibited categories in subdivision (A).

(ii) The child care agency, and the department for its employees, shall immediately exclude an individual from employment, from substitute services or from any access whatsoever to children in the child care agency or, if a resident of a child care agency, shall exclude the resident from access to children in the child care agency, if the results of the criminal background history or other information regarding the criminal history of the individual or a review of the vulnerable person's registry discloses that the criminal history of such individual is within the prohibited categories established in subdivision (A). The department shall deny the license or operator status of any such individual. If an exemption from the exclusion is provided for by rule of the department pursuant to subsection (f), such individual shall remain excluded or that individual's license or operator status shall be denied until it is determined by the department whether there is a basis for an exception from the exclusion.

SECTION 13. Tennessee Code Annotated, Section 71-3-507(f)(1), is amended by adding the language "or for any other exclusions of persons established pursuant to the

department's rules" immediately after the language "established by this section" in the first sentence; and is further amended by adding the following sentence immediately after the first sentence, as amended:

The department may also grant exemptions based upon the recommendations of the advisory group for persons who have been indicated by or found the departments of children's and human services as a perpetrators of abuse or neglect.

SECTION 14. Tennessee Code Annotated, Section 71-3-507(g)(4) , is amended by deleting the language "form obtained pursuant to the this section, together with the" in subdivision (A); and is further amended by deleting subdivisions (D) and (E) in their entirety and by substituting instead the following:

(D) The results of the inquiry to the Tennessee bureau of investigation shall be documented in the records of the entity making the requested criminal background history and in the records at the entity making the request involving the person for whom the background check was sought. If the entity is regulated by, or is a contractor to, the state of Tennessee, the entity shall immediately report the results of the background check to its regulatory or contracting state agency.

(E) If the information submitted on the disclosure form appears to have been falsified, the entity requesting the background check, or if the entity is regulated by or has a contract with the state of Tennessee, the regulatory or contracting agency, shall notify the district attorney general of the falsification in writing.

SECTION 15. Tennessee Code Annotated, Section 71-3-508, is amended by deleting subdivision (c) in its entirety and by substituting instead and adding the following language:

(c)(1) In the conduct of any investigations of any child care agency, the department, if it determines such to be necessary, may require the child care agency to enter into a

plan for the safety of children in the agency's care pending the outcome of any investigation by the department, by the department of children's services, or by any law enforcement or regulatory agency.

(2)(A) Such plan may require, but is not limited to: the exclusion or restriction of any individuals from access to the children in care; the closure or restricted use of any part or parts of the agency's facilities; the re-inspection of any of the agency's facilities by any other health, fire or safety agency; the modification or elimination of any service provided, or of any procedures utilized or any program conducted by the agency; or the receipt of further training by the agency's management, staff or volunteers.

(B) The plan may be based upon any preliminary or upon any final findings by the department. The plan may be established in coordination with the conduct of any child abuse or neglect investigation by the department of children's services and/or in coordination with any criminal investigation by a law enforcement agency, and/or in coordination with any investigation of the child care agency by any other regulatory agency, and may be based upon any preliminary or final findings of such departments or agencies. The plan may also incorporate any recommendations of such departments or agencies based upon their preliminary or final findings.

(3) The department may enforce the provisions of the safety plan by civil penalty not to exceed five hundred dollars (\$500.00), by suspension of the agency's license if appropriate, by issuance of a restricted license to the child care agency, and/or by denial or revocation of the child care agency's license.

(4) Any plan that exceeds ninety (90) days when proposed or that continues for more than ninety (90) days may be appealed to the child care agency board of review.

(d) Any violation of the inspection rights established in this section is a Class A misdemeanor.

SECTION 16. Tennessee Code Annotated, Section 71-3-509(b)(1), is amended by deleting the punctuation and language “, and if after reasonable written notice to the agency of the violation, the department determines that the violation remains uncorrected,”.

SECTION 17. Tennessee Code Annotated, Section 71-3-509(d)(1), is amended by deleting the language “or after notice of the revocation” and by substituting instead the language “or before or after notice of the revocation”.

SECTION 18. Tennessee Code Annotated, Section 71-3-509(e)(3)(A), is amended by deleting the language “before an administrative law judge or before a hearing officer who is not an employee of the department”.

SECTION 19. Tennessee Code Annotated, Section 71-3-509(e)(3)(C), is amended by deleting the third sentence and by substituting instead the following:

The sole issues to be considered are whether the public health, safety or welfare imperatively require emergency action by the department, what, if any, corrective measures have been taken by the child care agency following the violation of licensing laws or regulations and prior to the issuance of the summary suspension order that eliminate the threat to the public health, safety or welfare of the children in the care of the agency, and whether the agency demonstrates a reasonable ability to maintain or continue compliance with all relevant licensing laws and regulations.

SECTION 20. Tennessee Code Annotated, Section 71-3-510(a)(1), is amended by deleting subdivision (1) in its entirety and by substituting instead the following:

(1) Actions initiated by the departments of human services and children's services to deny or revoke or to otherwise limit any license except for summary suspension of, or probation involving, a license; or actions to review any civil penalties imposed by the department of human services; or to review any safety plan implemented by the department of human services which will be, or has been in

effect ninety (90) days or more, shall be reviewed by a child care agency licensing board of review.

SECTION 21. Tennessee Code Annotated, Section 71-3-510(g), is amended by adding the language “by the department of human services, in consultation with the department of children’s services,”.

SECTION 22. Tennessee Code Annotated, Section 71-3-510(i)(2), is amended by deleting in the first sentence the language and punctuation “three (3) members at-large who are selected to serve on the board, the representatives of the advisory board or advisory council of the departments,” and by substituting instead the language “four (4) members at-large who are selected to serve on the board”; and is further amended by deleting the language “advisory board or council and” in the second sentence.

SECTION 23. Tennessee Code Annotated, Section 71-2-409(c)(1), is amended by deleting the punctuation and language “, and if after reasonable written notice to the center of the violation, the department determines that the violation remains uncorrected,”.

SECTION 24. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 25. This act shall take effect upon becoming a law, the public welfare requiring it.